



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2971

Introduced 2/4/2014, by Sen. Dale A. Righter

SYNOPSIS AS INTRODUCED:

775 ILCS 5/2-102
820 ILCS 55/12

from Ch. 68, par. 2-102

Amends the Illinois Human Rights Act. Provides that it is a civil rights violation for an employer participating in the E-Verify Program, as authorized by 8 U.S.C. 1324a, (instead of "8 U.S.C. 1324a, Notes, Pilot Programs for Employment Eligibility Confirmation (enacted by PL 104-208, div. C title IV, subtitle A)") to take certain actions while knowingly failing to follow the procedures under the E-Verify Program. Amends the Right to Privacy in the Workplace Act. Adds the scienter of "knowingly" to elements of certain violations of the Act. Replaces references to the Basic Pilot Program with references to any federal Electronic Employment Verification System in order to conform to changes made by federal Public Law 111-83, Title V, Sec. 551. Provides that an employer's responsibility under the Section concerning the E-Verify Program is limited to the most current federal statute and federal regulations in effect at the time of the alleged violation.

LRB098 19879 HEP 55098 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Human Rights Act is amended by
5 changing Section 2-102 as follows:

6 (775 ILCS 5/2-102) (from Ch. 68, par. 2-102)

7 Sec. 2-102. Civil Rights Violations - Employment. It is a
8 civil rights violation:

9 (A) Employers. For any employer to refuse to hire, to
10 segregate, or to act with respect to recruitment, hiring,
11 promotion, renewal of employment, selection for training or
12 apprenticeship, discharge, discipline, tenure or terms,
13 privileges or conditions of employment on the basis of unlawful
14 discrimination or citizenship status.

15 (A-5) Language. For an employer to impose a restriction
16 that has the effect of prohibiting a language from being spoken
17 by an employee in communications that are unrelated to the
18 employee's duties.

19 For the purposes of this subdivision (A-5), "language"
20 means a person's native tongue, such as Polish, Spanish, or
21 Chinese. "Language" does not include such things as slang,
22 jargon, profanity, or vulgarity.

23 (B) Employment Agency. For any employment agency to fail or

1 refuse to classify properly, accept applications and register
2 for employment referral or apprenticeship referral, refer for
3 employment, or refer for apprenticeship on the basis of
4 unlawful discrimination or citizenship status or to accept from
5 any person any job order, requisition or request for referral
6 of applicants for employment or apprenticeship which makes or
7 has the effect of making unlawful discrimination or
8 discrimination on the basis of citizenship status a condition
9 of referral.

10 (C) Labor Organization. For any labor organization to
11 limit, segregate or classify its membership, or to limit
12 employment opportunities, selection and training for
13 apprenticeship in any trade or craft, or otherwise to take, or
14 fail to take, any action which affects adversely any person's
15 status as an employee or as an applicant for employment or as
16 an apprentice, or as an applicant for apprenticeships, or
17 wages, tenure, hours of employment or apprenticeship
18 conditions on the basis of unlawful discrimination or
19 citizenship status.

20 (D) Sexual Harassment. For any employer, employee, agent of
21 any employer, employment agency or labor organization to engage
22 in sexual harassment; provided, that an employer shall be
23 responsible for sexual harassment of the employer's employees
24 by nonemployees or nonmanagerial and nonsupervisory employees
25 only if the employer becomes aware of the conduct and fails to
26 take reasonable corrective measures.

1 (E) Public Employers. For any public employer to refuse to
2 permit a public employee under its jurisdiction who takes time
3 off from work in order to practice his or her religious beliefs
4 to engage in work, during hours other than such employee's
5 regular working hours, consistent with the operational needs of
6 the employer and in order to compensate for work time lost for
7 such religious reasons. Any employee who elects such deferred
8 work shall be compensated at the wage rate which he or she
9 would have earned during the originally scheduled work period.
10 The employer may require that an employee who plans to take
11 time off from work in order to practice his or her religious
12 beliefs provide the employer with a notice of his or her
13 intention to be absent from work not exceeding 5 days prior to
14 the date of absence.

15 (F) Training and Apprenticeship Programs. For any
16 employer, employment agency or labor organization to
17 discriminate against a person on the basis of age in the
18 selection, referral for or conduct of apprenticeship or
19 training programs.

20 (G) Immigration-Related Practices.

21 (1) for an employer to request for purposes of
22 satisfying the requirements of Section 1324a(b) of Title 8
23 of the United States Code, as now or hereafter amended,
24 more or different documents than are required under such
25 Section or to refuse to honor documents tendered that on
26 their face reasonably appear to be genuine; or

1 (2) for an employer participating in the E-Verify
2 Program, as authorized by 8 U.S.C. 1324a, ~~Notes, Pilot~~
3 ~~Programs for Employment Eligibility Confirmation (enacted~~
4 ~~by PL 104-208, div. C title IV, subtitle A)~~ to refuse to
5 hire, to segregate, or to act with respect to recruitment,
6 hiring, promotion, renewal of employment, selection for
7 training or apprenticeship, discharge, discipline, tenure
8 or terms, privileges or conditions of employment while
9 knowingly failing to follow ~~without following~~ the
10 procedures under the E-Verify Program.

11 (H) Pregnancy; peace officers and fire fighters. For a
12 public employer to refuse to temporarily transfer a pregnant
13 female peace officer or pregnant female fire fighter to a less
14 strenuous or hazardous position for the duration of her
15 pregnancy if she so requests, with the advice of her physician,
16 where that transfer can be reasonably accommodated. For the
17 purposes of this subdivision (H), "peace officer" and "fire
18 fighter" have the meanings ascribed to those terms in Section 3
19 of the Illinois Public Labor Relations Act.

20 It is not a civil rights violation for an employer to take
21 any action that is required by Section 1324a of Title 8 of the
22 United States Code, as now or hereafter amended.

23 (I) Pregnancy. For an employer to refuse to hire, to
24 segregate, or to act with respect to recruitment, hiring,
25 promotion, renewal of employment, selection for training or
26 apprenticeship, discharge, discipline, tenure or terms,

1 privileges or conditions of employment on the basis of
2 pregnancy, childbirth, or related medical conditions. Women
3 affected by pregnancy, childbirth, or related medical
4 conditions shall be treated the same for all employment-related
5 purposes, including receipt of benefits under fringe benefit
6 programs, as other persons not so affected but similar in their
7 ability or inability to work.

8 (Source: P.A. 97-596, eff. 8-26-11; 98-212, eff. 8-9-13.)

9 Section 10. The Right to Privacy in the Workplace Act is
10 amended by changing Section 12 as follows:

11 (820 ILCS 55/12)

12 Sec. 12. Use of Employment Eligibility Verification
13 Systems.

14 (a) Prior to choosing to voluntarily enroll in any federal
15 Electronic Employment Verification System, including the
16 E-Verify program ~~and the Basic Pilot program, as authorized by~~
17 ~~8 U.S.C. 1324a, Notes, Pilot Programs for Employment~~
18 ~~Eligibility Confirmation (enacted by P.L. 104-208, div. C,~~
19 ~~title IV, subtitle A),~~ employers are urged to consult the
20 Illinois Department of Labor's website for current information
21 on the accuracy of E-Verify and to review and understand an
22 employer's legal responsibilities relating to the use of the
23 voluntary E-Verify program.

24 (a-1) The Illinois Department of Labor (IDOL) shall post on

1 its website information or links to information from the United
2 States Government Accountability Office, Westat, or a similar
3 reliable source independent of the Department of Homeland
4 Security regarding: (1) the accuracy of the E-Verify databases;
5 (2) the approximate financial burden and expenditure of time
6 that use of E-Verify requires from employers; and (3) an
7 overview of an employer's responsibilities under federal and
8 state law relating to the use of E-Verify.

9 (b) Upon initial enrollment in any federal ~~an~~ Employment
10 Eligibility Verification System ~~or within 30 days after the~~
11 ~~effective date of this amendatory Act of the 96th General~~
12 ~~Assembly~~, an employer enrolled in E-Verify or any other federal
13 Employment Eligibility Verification System must attest, under
14 penalty of perjury, on a form prescribed by the IDOL available
15 on the IDOL website:

16 (1) that the employer has received the ~~Basic Pilot or~~
17 E-Verify training materials from the Department of
18 Homeland Security (DHS), and that all employees who will
19 administer the program have completed the ~~Basic Pilot or~~
20 E-Verify Computer Based Tutorial (CBT); and

21 (2) that the employer has posted the notice from DHS
22 indicating that the employer is enrolled in the ~~Basic Pilot~~
23 ~~or~~ E-Verify program and the anti-discrimination notice
24 issued by the Office of Special Counsel for
25 Immigration-Related Unfair Employment Practices (OSC),
26 Civil Rights Division, U.S. Department of Justice in a

1 prominent place that is clearly visible to both prospective
2 and current employees. The employer must maintain the
3 signed original of the attestation form prescribed by the
4 IDOL, as well as all CBT certificates of completion and
5 make them available for inspection or copying by the IDOL
6 at any reasonable time.

7 (c) It is a violation of this Act for an employer enrolled
8 in any federal ~~an~~ Employment Eligibility Verification System,
9 including the E-Verify program to knowingly ~~and the Basic Pilot~~
10 ~~program~~:

11 (1) ~~to~~ fail to display the notices supplied by DHS and
12 OSC in a prominent place that is clearly visible to both
13 prospective and current employees;

14 (2) ~~to~~ allow any employee to use any federal ~~an~~
15 Employment Eligibility Verification System prior to having
16 completed CBT;

17 (3) ~~to~~ fail to take reasonable steps to prevent an
18 employee from circumventing the requirement to complete
19 the CBT by assuming another employee's E-Verify ~~or Basic~~
20 ~~Pilot~~ user identification or password;

21 (4) ~~to~~ use any federal ~~the~~ Employment Eligibility
22 Verification System to verify the employment eligibility
23 of job applicants prior to hiring or ~~to~~ otherwise use any
24 federal ~~the~~ Employment Eligibility Verification System to
25 screen individuals prior to hiring and prior to the
26 completion of a Form I-9;

1 (5) ~~to~~ terminate an employee or take any other adverse
2 employment action against an individual prior to receiving
3 a final nonconfirmation notice from the Social Security
4 Administration or the Department of Homeland Security;

5 (6) ~~to~~ fail to notify an individual, in writing, of the
6 employer's receipt of a tentative nonconfirmation notice,
7 of the individual's right to contest the tentative
8 nonconfirmation notice, and of the contact information for
9 the relevant government agency or agencies that the
10 individual must contact to resolve the tentative
11 nonconfirmation notice;

12 (7) ~~to~~ fail to safeguard the information contained in
13 any federal ~~the~~ Employment Eligibility Verification
14 System, and the means of access to the system (such as
15 passwords and other privacy protections). An employer
16 shall ensure that the System is not used for any purpose
17 other than employment verification of newly hired
18 employees and shall ensure that the information contained
19 in the System and the means of access to the System are not
20 disseminated to any person other than employees who need
21 such information and access to perform the employer's
22 employment verification responsibilities.

23 (c-1) Any claim that an employer using a federal Employment
24 Eligibility Verification System refused to hire, segregated,
25 or acted with respect to recruitment, hiring, promotion,
26 renewal or employment, selection for training or

1 apprenticeship, discharge, discipline, tenure or terms,
2 privileges, or conditions of employment because the employer
3 knowingly failed to follow ~~without following~~ the procedures of
4 the Employment Eligibility Verification System, ~~including the~~
5 ~~Basic Pilot and E-Verify programs,~~ may be brought under
6 paragraph (G) (2) of Section 2-102 of the Illinois Human Rights
7 Act.

8 (c-2) It is a violation of this Section for an individual
9 to falsely pose as an employer in order to enroll in any
10 federal ~~an~~ Employment Eligibility Verification System or for an
11 employer to use any federal ~~an~~ Employment Eligibility
12 Verification System to access information regarding an
13 individual who is not an employee of the employer.

14 (d) Preemption. Neither the State nor any of its political
15 subdivisions, nor any unit of local government, including a
16 home rule unit, may require any employer to use an Employment
17 Eligibility Verification System, including under the following
18 circumstances:

- 19 (1) as a condition of receiving a government contract;
20 (2) as a condition of receiving a business license; or
21 (3) as penalty for violating licensing or other similar
22 laws.

23 This subsection (d) is a denial and limitation of home rule
24 powers and functions under subsection (h) of Section 6 of
25 Article VII of the Illinois Constitution.

26 (e) An employer's responsibility under this Section is

1 limited to the most current federal statute and federal
2 regulations in effect at the time of the alleged violation.

3 (Source: P.A. 95-138, eff. 1-1-08; 96-623, eff. 1-1-10;
4 96-1000, eff. 7-2-10.)